IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO.37 OF 2007
IN
CIVIL APPLICATION NO.4337 OF 2003
IN
FIRST APPEAL NO.1569 OF 2003

Shri Ramchandra Govind Kottawar .. Appellant

Vs.

Sau.Droupadi Appasaheb Dodmani
& Ors. .. Respondents

Mr.M.J.Lagu for the appellant

Ms.Sharvari Shailendra h/f Mr.P.S.Dani for the respondents

CORAM : J.N.PATEL &
A.A.SAYED, JJ.

DATED : 18TH APRIL, 2007

P.C.:

1. Heard.

2. The appeal can be disposed of at the stage of admission itself. The appellant is the original defendant no.2 who has purchased the property from original / defendant no.1 against whom the

respondent / original plaintiff has filed a suit for specific performance and succeeded. The learned single Judge while considering the application of the appellant original defendant no.2 for stay filed in First Appeal No.1569 of 2003 preferred by him, passed an order that he is not inclined to stay the decree in its entirety and refused to grant stay to the operative part of the decree in para 2 and 3 and aggrieved by this the original defendant no.2 / appellant has approached this court.

3. It is contended by the learned counsel for the appellant that if the judgment and decree is not stayed as a whole, the plaintiff would be able to execute a decree against defendant no.1 thereby depriving him of the property. On the other hand, the respondent / original plaintiff submits that the impugned order does not in any manner affect the rights of the appellant.

4. On going through the impugned order, we find that the learned single Judge of this court felt that as the A.O. is admitted and pending in

this court and inspite of the suit between the parties for possession, stay in so far as relating to the declaration as contended in para 4 of the order sufficiently protects the right of the appellant.

5. In our view, the suit property will be required to be preserved as a whole till the litigation between the parties is finally decided and as the First Appeal in the matter is pending, the learned single Judge ought to have granted stay as prayed for in order to preserve the subject matter of the suit i.e. the suit property of the litigants. Therefore, the impugned order is modified to the extent that the application for stay is allowed in terms of prayer clause (a). The appeal stands disposed of accordingly with no order as to costs.

(SHRI J.N. PATEL, J)

(SHRI A.A. SAYED, J)